

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TYRONE HUNT,

Plaintiff,

v.

UNITED STATES PAROLE COMMISSION,

Defendant.

No. C 12-2470 CW

ORDER GRANTING
APPLICATION TO
PROCEED IN FORMA
PAUPERIS AND
DISMISSING
COMPLAINT

Plaintiff Tyron Hunt files an application for leave to proceed in forma pauperis (IFP). The matter was decided on the papers. Having considered all of the papers filed by Plaintiff, the Court grants the application to proceed IFP and dismisses the complaint.

DISCUSSION

A court may authorize a plaintiff to prosecute an action in federal court without prepayment of fees or security if the plaintiff submits an affidavit showing that he or she is unable to pay such fees or provide such security. See 28 U.S.C. § 1915(a). Plaintiff has submitted the required documentation, and it is evident from his application that his assets and income are insufficient to enable him to prosecute the action. Accordingly,

1 the application to proceed without the payment of the filing fee
2 is granted.

3 The Court's grant of Plaintiff's application to proceed IFP,
4 however, does not mean that he may continue to prosecute his
5 complaint. A court is under a continuing duty to dismiss a case
6 filed without the payment of the filing fee whenever it determines
7 that the action "(i) is frivolous or malicious; (ii) fails to
8 state a claim on which relief may be granted; or (iii) seeks
9 monetary relief against a defendant who is immune from such
10 relief." 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Because a dismissal
11 pursuant to § 1915(e)(2)(B) is not a dismissal on the merits, but
12 rather an exercise of the court's discretion under the IFP
13 statute, the dismissal does not prejudice the filing of a paid
14 complaint making the same allegations. Denton v. Hernandez, 504
15 U.S. 25, 32 (1992).
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18 Plaintiff appears to allege that, because the United States
19 Parole Commission is not mentioned in the United States
20 Constitution, its authority to incarcerate or rehabilitate a
21 person violates the Eighth Amendment of the Constitution. Based
22 on this allegation, Plaintiff seeks the abolishment of the Parole
23 Commission and one million dollars in punitive and monetary
24 damages.
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26 Even construed liberally, Plaintiff's allegation fails to
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1 state a claim upon which relief can be granted. Furthermore,
2 amendment would be futile. Therefore, the complaint is dismissed
3 without leave to amend.

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5 IT IS SO ORDERED.

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7 Dated: 6/12/2012

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9 CLAUDIA WILKEN
10 United States District Judge
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